

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

PERFORMANCE PRICING, INC.,

Plaintiff,

v.

GOOGLE INC., AOL LLC, MICROSOFT
CORPORATION, YAHOO! INC.,
IAC SEARCH & MEDIA, INC., and
A9.COM, INC.,

Defendants.

Case No. 2:07-cv-432 (LED)

JURY TRIAL DEMANDED

**Plaintiff's Proposed Terms and Claim Elements
for Construction Pursuant to P.R. 4-1**

Pursuant to Patent Rule 4-1 of the United States District Court for the Eastern District of Texas, Plaintiff provides this Proposed Terms and Claim Elements for Construction to Defendants. Consistent with Patent Local Rule 4-1(b), Plaintiff reserves the right to supplement, revise, and otherwise finalize this list to facilitate the preparation of a Joint Claim Construction and Prehearing Statement.

Additionally, Plaintiff's investigation is continuing and the following disclosure is based on the information available to Plaintiff at this time. Thus, Plaintiff reserves the right to supplement or modify these Proposed Terms and Claim Elements for Construction as new information, through discovery or other investigation, becomes available.

The following is a list of claim terms, phrases, or clauses that Plaintiff contends should be construed by the Court:

- "price determining activity"
- "product"
- "first" and "second"
- "auction"

Terms and phrases found only in the preambles of the claims need not be construed because the steps of the method claims are complete without reference to the preambles. All of the other claim terms in the asserted claims can be understood by the jury consistent with their ordinary meaning.

Plaintiff reserves the right to offer constructions of terms identified by the Defendants.

Dated: November 3, 2008

Respectfully submitted,

By: /s/ Christin Cho

Christin Cho
CA State Bar No. 238173
Email: christin@dovellaw.com
Gregory S. Dovel
CA State Bar No. 135387
Email: greg@dovellaw.com
Sean Luner
CA State Bar No. 165443
Email: sean@dovellaw.com
Dovel & Luner, LLP
201 Santa Monica Blvd., Suite 600
Santa Monica, CA 90401
Telephone: 310-656-7066
Facsimile: 310-657-7069

S. Calvin Capshaw
State Bar No. 03783900
Elizabeth L. DeRieux
State Bar No. 05770585
Capshaw DeRieux, L.L.P.
Energy Centre
1127 Judson Road, Ste 220
P. O. Box 3999 (75606-3999)
Longview, Texas 75601-5157
Telephone: (903) 236-9800
Facsimile: (903) 236-8787
Email: capshaw@capshawlaw.com
Email: ederieux@capshawlaw.com

Robert M. Parker
State Bar No. 15498000
Email: rmparker@cox-internet.com
Robert Christopher Bunt
State Bar No. 00787165
Email: cbunt@cox-internet.com

Parker & Bunt, P.C.
100 East Ferguson, Ste. 1114
Tyler, TX 75702
Telephone: 903/531-3535
Facsimile: 903/533-9687

Franklin Jones, Jr.
State Bar No. 00000055
Email: maizieh@millerfirm.com
Jones & Jones, Inc., P.C.
201 W. Houston St.
P.O. Drawer 1249
Marshall, TX 75670

Otis W. Carroll, Jr.
State Bar No. 03895700
Email: fedserv@icklawn.com
6101 S. Broadway, Suite 500
Tyler, TX 75703

ATTORNEYS FOR PLAINTIFF
PERFORMANCE PRICING, INC.

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing instrument was served on all counsel of record by E-mail and/or Federal Express this 3rd day of November, 2008.

/s/ Christin Cho _____
Christin Cho